Renouncing British Citizenship

At a glance: Modern study of citizenship law has often focused on the law and practice of deprivation, and its implications for our understanding of British citizenship. This article offers the first detailed study of the law of renunciation of citizenship and its analogues, past and present, and incorporates the lessons of that study into the picture which has been painted on the basis of the law of deprivation.

Introduction

The period since the turn of the millennium has seen a number of changes to the law relating to the circumstances in which a person might be deprived of his or citizenship.[1] Taken together with a significant increase since 2010 in the frequency with these powers are used, these changes have prompted a rethinking of the nature of British citizenship and the suggestion that these developments have called into question or even altered altogether the normative basis of British citizenship.[2] In particular, the deprivation powers and their use seems to threaten the liberal conception of citizenship which has become dominant, within which citizenship is treated as a right of the individual which cannot be distributed or withheld according to discriminatory or arbitrary rules, rather than as a (mere) privilege. Involuntary deprivation, however, is not the only means by which one might, as a matter of domestic law, lose British citizenship. Since the middle of the twentieth century it has also been possible to renounce one's citizenship, something which was not possible at common law, when the equivalent of what we now call citizenship was in the first place the status as subject. Before then, reflecting a suspicion of our outright hostility to dual allegiance, it had been possible to lose one's citizenship only via acquisition of another nationality. An account of the nature of citizenship, and its changing conceptual and normative basis, must make room for this aspect of the law as well as that of deprivation.[3] After all, the numbers of renunciations, though low in absolute terms, are – as we shall see – far higher than those of deprivations.

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[1] See Matthew J Gibney, 'The Deprivation of Citizenship in the United Kingdom: A Brief History' (2014) 28 *JIANL* 326.

[2] See, eg, Matthew J Gibney "'A Very Transcendental Power": Denaturalisation and the Liberalisation of Citizenship in the United Kingdom' (2013) 61 *Political Studies* 637 and 'Should Citizenship Be Conditional? The Ethics of Denationalization' (2013) 75 *The Journal of Politics* 646. A more general overview is offered by David Cesarini, 'The Changing Character of Citizenship and Nationality in Britain' in David Cesarani and Mary Fulbrook (eds), *Citizenship, Nationality and Migration in Europe*, Routledge (1996).

[3] For a consideration of the question of renunciation in international law and in comparative perspective, see Savannah Price, 'The Right to Renounce Citizenship' (2017) 42 *Fordham International Law Journal* 1547.'

This article provides the first study of the changing law of renunciation over time – as the common law prohibition on renouncing allegiance gave way to a statutory right to renounce citizenship, and even to resume citizenship once renounced – and the different understandings of citizenship and the relationship between citizen and state which the legal position has reflected. Integrating these changes alongside analyses of the deprivation of citizenship into an account of the vision of citizenship embodied by the current law in Britain, it argues that citizenship has become bifurcated, not as a matter of law but of practice. The possibility of renunciation perpetuates in perhaps its purest form the liberal conception which the possibility of deprivation denies, giving the individual the option of extricating him or herself from the bonds of obligation it creates. The citizenship of some is treated by law as a privilege which might be taken from them; others are able to treat their own citizenship not only as a right, but as one which persists exactly as long as they wish it to. Though as a matter of law these groups might overlap, in reality they almost certainly do not: the same issues of economic and social capital – their presence and their absence – which make some particularly vulnerable to deprivation of British citizenship permit some to renounce that same precious good.

The contemporary law of deprivation

The law governing voluntary loss of citizenship can be usefully contrasted with that governing the deprivation of citizenship. Deprivation – the involuntary loss of citizenship – was not possible at common law, and the power was first introduced into law by the British Nationality and Status of Aliens Act 1914. Since then, the extent of the power has waxed and waned,[4] but the power was mostly used sparingly if at all until recent decades. It is now governed by the British Nationality Act 1981, as amended. A person may be deprived of his or her citizenship status – including, *inter alia*, the status of British citizen, British overseas territories citizen, and British Overseas citizen – which has resulted from registration or nationalisation on the grounds that it was acquired by fraud, false representation, or concealment of a material fact.[5] A person may, alternatively, be deprived of one of the statuses in question where the Secretary of State is satisfied that to so deprive him or her is 'conducive to the public good'.[6] This power differs in two ways from the first one. It is not limited to those who acquired the status by registration or naturalisation, and so can be used – for example – in relation to those who are British citizens by birth. The 'conducive'

[4] See Gibney (n 1) for the best overview.
[5] British Nationality Act 1981, s 40(3) (BNA 1981).
[6] BNA 1981, s 40(2). The legal standard for deprivation was tightened by the Nationality, Immigration and Asylum Act 2002 with a view to UK accession to the European Convention on Nationality. It was then loosened – taking its current form – by the Immigration, Asylum and Nationality Act 2006, and the UK remains outside the Convention.

power, however, cannot be used where the Secretary of State is satisfied that the effect of the power would be to make the person in question stateless.[7] This second power is, in the modern United Kingdom, used heavily, with over 100 people deprived of their citizenship on the basis in 2017.[8]

A final power to deprive, introduced into law by the Immigration Act 2014, differs in three important ways from the conducive power. First, it applies only to those whose citizenship status results from naturalisation, and so excludes citizens by birth.[9] Second, a much higher standard applies: this power can be exercised not whenever to do so is conducive to the public good, but only where it is so conducive specifically on the basis that 'the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory'.[10] Third, it is not an absolute bar to the exercise of this new power that the person will be left stateless. Rather, it can be used only where the Secretary of State has 'reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory'.[11] This power was first introduced into order, it seems, to address the rather particular situation of a specific individual, Hilal al Jedda,[12] but he was eventually deprived of his British citizenship under the plain conducive power,[13] and so no use seems ever to have been made of the newer power.

The evolving law of deprivation has been frequently argued to have altered or undermined the basis of British citizenship,[14] with the increasing use of the power over time causing alarm. Deprivation, so the argument goes, calls into question the adherence of domestic law to the dominant 'liberal' conception of citizenship.[15] It does so first by suggesting that citizenship is not a right but a mere privilege, the continued possession of which is dependent upon the wider public interest. It does so secondly by creating a distinction between those whose citizenship is secure

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[7] BNA 1981, s 40(4).
[8] See, HM Government, *Transparency Report 2018: Disruptive and Investigatory Powers*, Cm 9609 (2018), [5.09].
[9] BNA 1981, s 40(4A)(a).
[10] BNA 1981, s 40(4A)(b).
[11] BNA 1981, s 40(4A)(c).
[12] See the judgment in *Secretary of State for the Home Department v Al-Jedda* [2013] UKSC 62.
[13] See the unsuccessful challenge to the deprivation order: *Al-Jedda v Secretary of State for the Home Department* SC/66/2008 (18 July 2014).
[14] See in particular Gibney (n 1) and Gibney (n 2).
[15] On which, see, for example, Iseult Honohan, 'Liberal and Republican Conceptions of Citizenship' in Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (eds), *The Oxford Handbook of Citizenship* (Oxford, OUP, 2017).

and those whose citizenship is not. In the latter case, in particular, the modern law of deprivation has an obvious racial dimension. First, those whose families are more recent arrivals to the United Kingdom are more likely to fall within the scope of the deprivation power because they are more likely to have a second nationality to fall back on. Secondly, as a matter of practice, there appears to be a pattern whereby the United Kingdom is more likely to deprive of their British citizenship those whose second nationality is that of a non-Western, non-allied country, which lacks the diplomatic clout to force the United Kingdom to take responsibility for its own citizens, and which may be less concerned if the person so deprived is, say, shortly thereafter killed by a drone strike.[16] Over the last decade or so, these powers, their use, and their implications for our understanding of the nature and meaning of British citizenship have attracted significant attention. What has not taken place, however, has been the juxtaposition of the law of deprivation of citizenship with that of its voluntary loss - the renunciation of citizenship. Here, I attempt to do so by first charting the changing law of renunciation and its analogues over time.

The law of renunciation

The common law

Common law knew no concept of citizenship, but was instead organised around the concept of subjecthood, and so in tracing back the law of renunciation of citizenship we are in fact asking whether it was possible to give up one's subjecthood. The answer is no. At common law, it was not possible to renounce the allegiance which one owed to the Crown as its subject,[17] a fact whose significance derived primarily from that fact that only a person owing such allegiance could commit treason. The case of the martyr 'Blessed' John Story,[18] executed for treason under Queen Elizabeth and later beatified, is the starting point of the case law. Story, the report of his 1571 trial narrates, spoke against the Bill for the restitution of the Book of Common Prayer in terms alleged to be treasonous.[19] When put on trial (having been abducted in the Netherlands),[20] however, Story claimed that because he had sworn allegiance to Philip II of Spain he was not a subject of the Queen, and so could not have betrayed her.[21] This account did not save Story, who was convicted

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[16] See, eg, Alice Ross, *Deprivation of Citizenship: What Do We Know?* (2014) 28 *JIANL* 316.

[17] The relationship between citizenship and allegiance is the subject of a pair of articles by John Salmond, tracing the idea through Roman law into English law: see John W Salmond, 'Citizenship and Allegiance' (1901) 17 *LQR* 270 and 'Citizenship and Allegiance: Nationality in English Law (1902) 18 *LQR* 49.

[18] 'STORY, John (c.1504-71)' in ST Bindoff (ed), *The History of Parliament: the House of Commons 1509*-1558, vol III (History of Parliament Trust, 1982).

[19] *Arraignment, Judgment, and Execution of John Story for Treason* (1571) 1 St Tr 1087, 1087-8.

[20] The story of which is told in Ronald Pollitt, 'The Abduction of Doctor John Story and the Evolution of Elizabethan Intelligence Operations' (1983) 14 *The Sixteenth Century Journal* 131.

[21] '.. the Recorder of London made the like demand as was demanded of me at Westminster, whether I was born in England or no? whereunto I answered, I was. Then he said, it followeth that you are and ought to

of treason and hanged.[22] That subjecthood could not be renounced was held once more during the 1747 trial – for his part in the 'late rebellion'[23] – of Æneas Macdonald, the so-called 'banker to the Pretender' and one of the 'seven men of Moidart' who accompanied that 'Pretender', Charles Stuart, on his return to Scotland from France.[24]

Macdonald's defence to the charge of treason was based originally on the claim that he had been born in the 'dominions of the French King', but the evidence was against him. On the principle of 'natural allegiance' which gave import to the question of where Macdonald had been born, the defence was dismissive: 'they represented it as a slavish principles, not likely to prevail in these times; especially as it seemed to derogate from the principles of the Revolution'.[25] This claim the court declared to 'serve no purposes but to bring an odium on that great and glorious transaction' – the Revolution of 1689 – and stated that it 'never was doubted that a subject born, taking a commission from a foreign prince, and committing high treason, may be punished as a subject for that treason, notwithstanding his foreign commission.'[26] Dr Story's case 'was never yet denied to be law' and it was 'not in the power of any private subject to shake off his allegiance, and to transfer it to a foreign prince.'[27] Neither was it 'in the power of any foreign prince by naturalizing or employing a subject of Great Britain to dissolve the bond of allegiance between that subject and the crown.'[28] The jury, deciding that the evidence showed Macdonald to have been born in Britain, found him guilty of treason, though his sentence was commuted and he was instead exiled.[29]

These two cases were decided either side of *Calvin's Case*, which provides the fullest account of their underpinning logic.[30] The case address the position of the *postnati* – those born in Scotland

continue the queen's faithful subject. Whereunto I replied then, as I do now, saying; I am sworn to the noble king, defender of the ancient Catholic faith, king Philip, of Spain: and he is sworn again by a solemn and corporal Oath, to maintain and defend the University of Lovaine, whereof I am a member; and therefore no subject of this realm, nor yet subject to any laws thereof…' (1571) 1 St Tr 1087, 1093.

[22] History of Parliament (n 18).

[23] *The Case of Æneas Macdonald, alias Angus Macdonald* (1747) 18 St Tr 857.

[24] For a recent consideration of the life of one of the seven which describes also some of Macdonald's involvement, see Ian D Hodkinson, 'In the Shadow of the Stuart Pretenders: the Life of Francis Strickland 'Man of Moidart' (And Westmorland?)' (2020) 57 *Northern History* 77.

[25] (1747) 18 St Tr 857, 859.

[26] (1747) 18 St Tr 857, 859.

[27] (1747) 18 St Tr 857, 859.

[28] (1747) 18 St Tr 857, 859.

[29] (1747) 18 St Tr 857, 859.

[30] *Calvin's Case* (1608) Co Rep 1a, 77 ER 377. See Polly J Price, 'Natural Law and Birthright Citizenship in Calvin's Case (1608)' (1997) 9 *Yale Journal of Law and the Humanities* 73 and Keechang Kim (1996) 'Calvin's

after the Union of Crowns on the head of James I of Great Britain in 1603. Robert Calvin, born in Scotland, was due to inherit land in England. His right to do so was challenged on the basis that he was an alien to England, not being a subject of its king and owing him no allegiance. The Court of King's Bench held that, being born in Scotland at a time when James was its king, Calvin was the King's subject just as if he had been born in England. Coke CJ defined the relationship between a king and his subjects in terms of the reciprocal relationship of protection and allegiance which subsists between them: 'subjects are called his liege subjects, because they are bound to obey and serve him; arid he is called their liege lord, because he should maintain and defend them.'[31] The key distinction was between subjects and aliens, with the latter divided into 'friendly' and 'enemy' aliens, the category into which a person fell being determinative of their rights under English law.

Alien friends, Coke said, 'may by the common law have, acquire, and get within this realm, by gift, trade, or other lawful means, any treasure, or (a) goods personal whatsoever, as well as an Englishman, and may maintain any (b) action for the same: but (c) but lands within this realm, or houses (but for their necessary habitation only) alien friends cannot acquire, or get, nor maintain any action real or personal, for any land or house, unless the house be for their necessary habitation.'[32] If a man was an enemy alien, however, then he was 'utterly disabled to maintain any action, or get any thing within this realm.'[33] Such 'temporary' aliens could – depending upon the state of relations between their Monarch and that of England – move between the category of friend and enemy. Others, however, were 'perpetual' enemies.[34] Though Coke does not focus on the question, his account of the ability (and inability) of aliens to change their status while remaining within that fundamental category implies what had been said in *Story* and would later be reaffirmed in *Macdonald*. The categories of subject and alien were fixed at birth, and (at common law) one could not move between them; not exchange a relationship of protection and correlative duty of allegiance that was permanent, following the subject through time and space, with one which was temporary and contingent, subject to the vagaries of location and international relations.

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case (1608) and the law of Alien status' (1996) 17 *The Journal of Legal History* 155. See also Keechang Kim, *Aliens in Medieval Law: The Origins of Modern Citizenship* (Cambridge, CUP, 2000), ch 8.

31 (1608) Co Rep 1a, 5a.

32 (1608) Co Rep 1a, 17a.

33 (1608) Co Rep 1a, 17a.

34 Chief amongst these were what Coke called 'infidels', 'for between them, as with the devils, whose subjects they be, and the Christian, there is perpetual hostility, and can be no peace'. (1608) Co Rep 1a, 17a-b. On the status of infidels in English law, see Edward Cavanagh, 'Infidels in English Legal Thought: Conquest, Commerce and Slavery in the Common Law from Coke to Mansfield, 1603–1793' (2019) 16 *Modern Intellectual History* 375.

Blackstone, writing in the decades after *Macdonald*, described this as 'an implied, original, and virtual allegiance, owing from every subject to his sovereign, antecedently to any express promise'.[35]Allegiance generally took one of two forms, 'the one natural, the other local; the former being also perpetual, the latter temporary.' The former category is that into which the natural-born subject falls. Such people 'immediately upon their birth, they are under the king's protection; at a time, too, when (during their infancy) they are incapable of protecting themselves'. It is a 'debt of gratitude' which 'cannot be forfeited, cancelled, or altered by any change of time, place, or circumstance, nor by any thing but the united concurrence of the legislature'.[36] Though a person owing natural and perpetual allegiance to the King might be 'entangled by subjecting himself absolutely to another' monarch, Blackstone is clear that he cannot in this manner divest himself of his obligations to that to whom allegiance was first owed, for 'it is his own act that brings him into these straits and difficulties, of owing service to two masters'.[37] An alien, however, owed only 'local' allegiance, and only 'for so long time as he continues within the king's dominion and protection: and it ceases the instant such stranger transfers himself from this kingdom to another'.[38]

The same logic of indelible allegiance is at work in *Isaacson v Durant* ('the Stepney Election Petition').[39] The Queen's Bench was asked to determine whether Hanoverians who had been born in Hanover before the accession of Queen Victoria to the throne of the United Kingdom but were now resident in England were entitled to vote in elections in England. The significance of the timing is that Victoria's predecessor on the throne of the United Kingdom was William IV, who was also King of Hanover. On William's death, however, succession to each throne was different: where Victoria took that of the United Kingdom (being the daughter of William's younger brother

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[35] Blackstone, *Commentaries on the Laws of England*, vol 1, 368-9.

[36] Blackstone (n 35) 369. 'An Englishman who removes to France, or to China, owes the same allegiance to the king of England there as at home, and twenty years hence as well as now. For it is a principle of universal law, that the natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former: for this natural allegiance was intrinsic, and primitive, and antecedent to the other; and cannot be devested without the concurrent act of that prince to whom it was first due.'

[37] Blackstone (n 35) 370.

[38] Blackstone (n 35) 370. Blackstone's treatment of the matter drew heavily on that of Sir Matthew Hale, who had acknowledged the possibility of subordinate allegiances but excluded that of coordinate allegiances: Matthew Hale, *The History of the Pleas of the Crown* (London, F Gyles, T Woodward and C Davis, 1736), vol I, 68. Foster made the point succinctly, noting 'that the well-known maxim which the writers upon our law have adopted and applied to this case, *nemo potest exuere patriam*, comprehendeth the whole doctrine of natural allegiance': Michael Foster, *A Report of Some Proceedings on the Commission for the Trial of the Rebels in the Year 1746, in the County Of Surry; and of Other Crown Cases: to which are Added Discourses Upon a Few Branches of the Crown Law* (3rd edn, London, E and R Brooke, 1792), 184.

[39] *Isaacson v Durant* (1886) 17 QBD 54.

Edward, fourth son of George IV), succession to the throne of Hanover was determined by Salic law and so that went instead to Edward's younger brother Ernest Augustus (the fifth son).[40] The personal union between the UK and Hanover thus came to an end on William's death. The Petition was heard by Denman and Field JJ, who held that the legal questions raised required consideration by the Queen's Bench. The result was outlined by Lord Coleridge CJ, who held that a Hanoverian who had not required naturalisation in the United Kingdom during the lifetime of William IV needed it on his death, 'when the Hanoverian heir and successor of that monarch was no longer the sovereign of these islands':

> He became an alien because the sovereign to whom his allegiance was due was a foreign sovereign; and the person to whom his allegiance had been due was dead leaving an heir. The Crowns had by accident been united in one person, but when the union of the Crowns came to an end the union of allegiance ceased too; and the allegiance which had been due to the King of Hanover, who was also King of the United Kingdom, was never at any time due to the Queen of the United Kingdom, who was not and who could not be by law Queen of Hanover.[41]

Counsel for the petitioners argued that in the situation of conflicting allegiances English law gave the individual 'a right of election of which sovereign he will become the subject.'[42] This was rejected: the alleged authority for the proposition was case law arising out of the independence of the American colonies, but in such case there had been no election. Rather, the situation was governed by a treaty by which 'the king having set free the inhabitants of the States from their allegiance, they became aliens'.[43] Other case law is identified as resting upon the proposition that 'allegiance to the Crown of this country cannot be got rid of except by treaty to which the King of his country is a party, and by which he relinquishes his claim to that allegiance',[44] a point to which I return below. Here, the King of Hanover was the lawful successor of the person to whom a natural-born Hanoverian owed allegiance, and there was no suggestion that he, the King, had taken

[40] (1886) 17 QBD 54, 55-6.
[41] (1886) 17 QBD 54, 59-60.
[42] (1886) 17 QBD 54, 60.
[43] (1886) 17 QBD 54, 60. The perpetuity of allegiance had been the subject of significant attention during the American Revolution, and continued to resound even after independence was achieved as the United Kingdom sought to impress those born before independence into its navy: see Thomas S Martin, 'Nemo Potest Exuere Patriam: Indelibility of Allegiance and the American Revolution' (1991) 35 *AJLH* 205, as well as the discussion in Ann Dummett and Andrew Nicol, *Subjects, Citizens, Aliens and Others* (London, Weidenfeld and Nicolson, 1990), 86-7.
[44] (1886) 17 QBD 54, 60.

any step whatsoever to relinquish the claim to allegiance which was owed to him and so allow that allegiance to pass to Victoria.

A final point relates to the inconveniences which would result from a claim of dual allegiances, which were 'as far as an argument ab inconvenienti ever can be, practically conclusive', and relate to the implications of such dual allegiance for war and, in particular, the question of treason. 'If the Queen of these islands and the German Emperor were to go to war', Coleridge observed, 'any one of these resident non-naturalized Hanoverians would undoubtedly, if serving in the British army and taken prisoner, be liable to be shot as a traitor in arms against his sovereign, and the case would be the same with an Englishman (and there must be many such) residing in Hanover, not naturalized and serving in the German armies.' Hence the absurdity of the idea of dual allegiance: 'that a man rightfully and legally in the allegiance of one sovereign could be also rightfully and legally treated as a traitor by another, cannot be the law.'[45] Referring to the passage from Blackstone quoted above, in which Blackstone accepts the possibility of dual allegiances where the natural-born subject of one King pledges his allegiance to another but shows no sympathy to one whose own act has brought him into these difficulties, Coleridge noted – with palpable sarcasm – that 'Sir William Blackstone plainly had never heard of the doctrine that a man could get rid, by election, of an allegiance he was born under.'[46] The result was that, the Queen's Bench Division held, those to whom the petition related were – being aliens – not in fact permitted to vote.[47] Allegiance, it had in effect been recognised, was due not in fact to the person of the monarch but to the sovereign in his or her political capacity.[48] And the same hostility to the concept of dual nationality evidenced by *Isaacson* shaped, as we shall see below, much of the early statutory departures from the rule that one could not renounce one's subjecthood.[49]

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[45] (1886) 17 QBD 54, 63.

[46] (1886) 17 QBD 54, 63. The idea that one might choose, in effect, between being a subject and a citizen was one which seems to have gained currency in the United States after the revolution: for a discussion of the ebb and flow of this idea, see James H Kettner, 'The Development of American Citizenship in the Revolutionary Era: The Idea of Volitional Allegiance' (1974) 18 *AJLH* 208.

[47] (1886) 17 QBD 54, 66.

[48] P E Nygh, 'Problems of Nationality and Expatriation before English and Australian Courts' (1963) 12 *ICLQ* 175, 178.

[49] The desire to avoid conflicting allegiances – the belief that dual nationality risked 'embroiling the state in international disputes over matters of military duties, taxation, etc. and divided the individual's duties' – was one of the drivers of the growth of powers to denaturalise citizens in the early twentieth century: Matthew J Gibney, 'Denationalisation and Discrimination' (2019) *Journal of Ethnic and Migration Studies*. Gibney quotes P Spiro, 'Dual Citizenship as Human Right' (2010) 8 *ICON* 111, 113: 'Dual nationals represented instability in a world in which the downsides of instability were serious, in an era in which there were no brake triggers on the way to war'.

The American situation to which reference was made in the Stepney case draws attention to an exception to the situation of perpetual allegiance on which the common law insisted, whereby the Crown might do what the individual could not and relinquish the allegiance owed to it. The effect of this was considered in *Doe v Acklam*,[50] where an action in ejectment was brought for the recovery of land in York whose owner had recently died. The action was brought by her daughter, who had been born in the United States in 1784 to a father who had been born there before 1776 and the adoption by the Second Continental Congress of the Declaration of Independence. English law permitted the daughter to inherit land only if she was born to a father who was, at the time of her birth, a natural-born subject of the Crown. Abbott CJ held that while her father was born a subject of the Crown, being born 'in a part of America which was at the time of his birth a British colony', he was no longer so at the time of his daughter's birth.[51] Though the Treaty which had recognised the States' independence made no explicit mention of the subjects of the territory being relinquished, the court rejected the idea that they were in some sense retained by the Crown, holding that 'a relinquishment of the government of a territory, is a relinquishment of authority over the inhabitants of that territory' and so 'a declaration that a State shall be free, sovereign, and independent, is a declaration, that the people composing the State shall no longer be considered as subjects of the Sovereign by whom such a declaration is made.'[52] The father had become an alien before his daughter was born and so could not pass subject status to her: she too was an alien to the Crown and so could not inherit land within its realm.

This demonstrates neatly that the relationship between Crown and subject – though framed in terms of the reciprocal duties of allegiance and protection – nevertheless gave the Crown the upper hand. It was able to do what the subject could not and bring that mutual relationship to an end. Even such ability seemed, however, to have its limits: expatriation at common law could not take place at the level of the individual, but only as a secondary function of the loss of territory. It thus contrasts with the modern law of deprivation, which again permits the reciprocal relationship to be broken by the unilateral action by the state, but does so on a direct and individual basis. When territory, and with it allegiance, was transferred to another sovereign, of course, there was no possibility that a person whose allegiance was relinquished would be left with no sovereign

[50] *Doe d. Thomas v Acklam* (1824) 2 B&C 779. See also *Doe d. Auchmuty v Mulcaster* (1826) 5 B&C 771.
[51] 'She was born after the independence of the colonies was recognised by the Crown of Great Britain; after the colonies had become united States, and their inhabitants generally citizens of those States; and her father, by his continued residence in those States, manifestly became a citizen of them.' (1824) 2 B&C 779, 795.
[52] (1824) 2 B&C 779, 796.

and no protection. That direct individual deprivation creates such a possibility accounts for the limitations to which the modern law is subject.

There would not, though, always be a treaty governing the matter. In *Murray v Parkes* the appellant, charged in relation to his failure to submit to a medical examination for national service, had been born in what became in 1922 the dominion known as the Irish Free State, moving to England in 1934 and continuing to reside there until the 1940s.[53] In the meantime, the Irish Free State had – in exercise of the authority recognised to it by the Statute of Westminster – legislated for its 1937 Constitution and become the state known as Ireland. Ireland had thus, the appellant claimed, exited the Commonwealth of Nations, with such exit recognised by the United Kingdom Eire (Confirmation of Agreements) Act, 1938. The effect was that he had ceased to be a British subject, and so the obligations of national service did not apply to him. This was rejected by the King's Bench Division, which held that even if Ireland had successfully seceded, the appellant – having continued to reside in England – had failed to discharge the statutory burden of showing that he was not a British subject.[54] Viscount Caldecote CJ went further, however, casting significant doubt on both of the relevant propositions: that Ireland had in fact seceded ('[at no time] has it ever been declared in terms by the government of Eire, that the so-called right to secede has in fact been exercised')[55] and that the United Kingdom had ever recognised that secession.[56] The 1938 Act was not, he suggested, equivalent to the clear recognition of American independence via Treaty that framed the earlier case law. Though the result may have been different had Murray returned to Ireland in 1937, the case again underlines the Crown's upper hand in issues of nationality.

The changing law

The possibility of voluntary loss of allegiance – an early, partial, equivalent to what we would now call renunciation – was first introduced by the Naturalization Act 1870, under the name of 'expatriation'. The Act provided that British subjects who had become naturalised in a foreign state would automatically cease to be a British subject (and so 'be regarded as an alien').[57] Such

[53] *Murray v Parkes* [1942] 2 KB 123. See FA Mann, 'The Effect of Changes of Sovereignty upon Nationality' (1942) 5 *MLR* 218.
[54] [1942] 2 KB 123, 131.
[55] [1942] 2 KB 123, 127-9
[56] [1942] 2 KB 123, 127-9.
[57] Naturalization Act 1870, s 6 (NA 1870) See Salmond, *Nationality in English Law* (n 17) 57: 'The Naturalization Act, 1870, has however all but abolished [the] principle of indelible nationality. Any man is now free to throw off his allegiance to the Crown by becoming naturalized in any foreign state'.

naturalisation would have that effect only if voluntary, and an exception was provided for those who had become naturalised elsewhere prior to the enactment of the 1870 statute: such persons could, within two years of enactment make a declaration of British nationality and after doing so would 'be deemed to be and to have been continually a British subject', except when in the territory of the state of which he or she had become a national.[58] Those who were born dual nationals could choose to make a declaration of alienage and so cease to be a British subject; so too could those who born outside the Crown's dominions to a father who was a British subject.[59] The other key situation in which one might lost one's British status was inherently gendered: the Act provided that a married woman was to be 'deemed to be a subject of the state of which her husband is for the time being a subject'.[60] This represented a departure from the common law, by which marriage did not affect nationality (an earlier statute had changed that rule as regards an alien woman who married a British subject).[61] By extending it to women who were British subjects marrying alien men, the 1870 Act in effect did not just permit them to lose their subjecthood, but took that subjecthood from them without their consent.[62] Both of these situations therefore differ from the later right to renounce one's citizenship at a time and under circumstances of own's own choosing. They therefore reflect a middle stage between the common law hostility to loss of allegiance under any circumstances and the modern tolerance of dual citizenship.[63] Allegiance to the Crown could be lost – was in fact extinguished – when transferred to another sovereign.

A similar approach was carried over into the British Nationality and Status of Aliens Act 1914, which provided that a British subject who 'when in any foreign state and not under disability, by obtaining a certificate of naturalization or by any other voluntary and formal act, becomes naturalized therein, shall thenceforth be deemed to have ceased to be a British subject.'[64] The 1914 Act, however, added other methods by which nationality might be voluntarily lost. Section 14 permitted a natural-born British subject (one born 'within His Majesty's dominions and allegiance or on board a British ship') who 'at his birth or during his minority became under the law of any foreign state a subject also of that state' to renounce the British subjecthood by making a declaration of alienage. Such a declaration might also be made by any natural-born British subject

[58] NA 1870, s 6(1).
[59] NA 1870, s 4.
[60] NA 1870, s 10.
[61] Naturalization Act 1844.
[62] See, most fully, Helen Irving, *Citizenship, Alienage, and the Modern Constitutional State: A Gendered History* (Cambridge, CUP, 2016), ch 3.
[63] The historical hostility to dual citizenship is discussed in Peter J Spiro, *At Home in Two Countries: The Past and Future of Dual Citizenship* (New York, NYU Press, 2016), ch 1.
[64] British Nationality and Status of Aliens Act 1914, s 13 (BNSAA 1914).

born outside 'His Majesty's Dominions'.[65] Finally, the 1914 Act permitted naturalised subjects to renounce their status as such if acting in accordance with a treaty between the Crown and their state of origin.[66] Otherwise naturalised citizens were unable to renounce their status as such. The 1914 Act further provided that '[w]here any British subject ceases to be a British subject, he shall not thereby be discharged from any obligation, duty or liability in respect of any act done before he ceased to be a British subject.'[67]

Here too marriage impacted upon one's citizenship status.[68] The general rule was now that 'the wife of a British subject shall be deemed to be a British subject, and the wife of an alien shall be deemed to be an alien.'[69] However, it was provided that a woman who was a British subject would, when marrying an alien, be deemed to have ceased to be a British subject only if 'by reason of her marriage, she acquired the nationality of her husband'.[70] The same applied to a British subject wife whose British subject husband ceased to be a British subject during the period of marriage – the wife would lose her nationality only if her husband's acquisition of a new nationality caused her to acquire that nationality also.[71] And in that second case, the wife was permitted to declare – within 12 months of acquiring her new nationality – her desire to remain a British subject 'and thereupon she shall be deemed to have' done so.[72] These new rules were later defended on the basis that they were the only effective way of discouraging British woman from marrying – often racially 'undesirable' – foreigners.[73]

The British Nationality Act 1948 – passed following the introduction by Canada of its own citizenship[74] – contained a broad right to renounce citizenship. A Citizen of the United Kingdom and Colonies ('CUKC') who was also a citizen of a number of independent Commonwealth states (or Ireland) or a national of a foreign country could renounce his or her British citizenship by

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65 BNSAA 1914, s 14(2).
66 BNSAA 1914, s 15.
67 BNSAA 1914, s 16.
68 See Irving (n 62) 75-77 and M Page Baldwin, 'Subject to Empire: Married Women and the British Nationality and Status of Aliens Act' (2001) 40 *Journal of British Studies* 522.
69 BNSAA 1914, s 10(1).
70 BNSAA 1914, s 10(2).
71 BNSAA 1914, s 10(3).
72 BNSAA 1914, s 10(4).
73 See the discussion in Nadine El-Enany, *(B)ordering Britain: Law Race and Empire* (Manchester, MUP, 2020) 76.
74 For a discussion of the legal and political context, see Randall Hansen, 'The Politics of Citizenship in 1940s Britain: The British Nationality Act' (1999) 10 *Twentieth Century British History* 67. A wider framing is offered by Jatinder Mann, 'The evolution of Commonwealth citizenship, 1945–1948 in Canada, Britain and Australia' (2012) 50 *Commonwealth & Comparative Politics* 293.

making a declaration to that effect, to be registered by the Secretary of State.[75] The right was subject to a proviso permitting the Secretary of State to withhold the registration of a declaration of renunciation 'if it is made during any war in which His Majesty may be engaged by a person who is a national of a foreign country.'[76] This fact was linked to the removal of the rule, in the same statute, by which naturalisation in a foreign state caused automatically the loss of nationality. This removal Jones attributed to the fading of two ideas which had previously prevailed: that 'double nationality should be avoided or minimized so far as possible by municipal legislation' and that naturalisation in a foreign state 'showed a desire to shake off British allegiance and to identify the person applying for it with the state of his new nationality.'[77] Double nationality was no longer thought, he noted, 'specially undesirable', while the experience of two wars had demonstrated that 'many persons of unimpeachable British associations… became naturalized in foreign countries for purely business reasons' and so there was no justification for them losing their British nationality merely by reason of doing so.[78] On the question of marriage, the 1948 Act reversed the effect of many of its predecessors, providing that a woman who before its commencement had ceased to be a British subject as a result of marriage (whether on marriage or during its continuance) would from here on 'be deemed for the purposes of this Act to have been a British subject immediately before the commencement of this Act.'.[79] The 1948 Act, which implemented a model of citizenship suited for a world of independent states – each with its own citizenship laws –grouped together under the banner of the Commonwealth, assumed that all newly independent countries would permit dual nationality. As it turned out, that was not the case. It was noted in Parliament a decade and a half later that 'it has come about that, under the law of certain Commonwealth countries, those of its new citizens who are permitted under our law to retain their citizenship of the United Kingdom and Colonies are required to renounce that citizenship on pain of forfeiture of the new citizenship; and those who do not automatically acquire the new citizenship, but may acquire it on application, are required, as a condition of obtaining the local citizenship, to give up their citizenship of the United Kingdom and Colonies.'[80] This problem was addressed by the British Nationality Act 1964, which permitted those who had renounced their citizenship of the United Kingdom and the Colonies to resume citizenship if allowed to do so by

[75] British Nationality Act 1948, s 19(1) (BNA 1948). The list of independent Commonwealth states was found in section 1(3) of the Act. Crucially, citizens of those states were, by virtue of section 1(1), British subjects and so those who by renouncing their CUKC status were left only with the citizenship or one of the other of those states remained British subjects.
[76] BNA 1948, s 19(1).
[77] J Mervyn Jones, 'British Nationality Act, 1948' (1948) 25 *British Yearbook of International Law* 158, 174.
[78] Jones (n 77) 174.
[79] BNA 1948, s 14.
[80] HL Deb 3 March 1964, vol 256 col 16 (Lord Derwent).

the Secretary of State.[81] Entitlement to registration required, however, a 'qualifying connection' to the United Kingdom and Colonies – most usually, but not exclusively – birth in the United Kingdom or one of its colonies.[82] This requirement was – as the European Commission of Human Rights noted in *East Asian Afrians v United Kingdom* – a form of racial discrimination, which 'would normally be fulfilled by the so-called "white settlers", but not by members of the Asian communities in East Africa.'[83]

The 1964 Act also made a second change, this time to the process of renunciation in the 1948 Act. As noted above, the 1948 Act permitted renunciation of citizenship only where the person renouncing possessed a second nationality. This caused problems for those who wished to take up another nationality but were required to renounce their UK status before doing so:

> The object of including this restriction was the very laudable one of seeking to avoid a situation in which a person, perhaps unwittingly, could render himself stateless. Experience has shown, however, that hard cases can arise as a result of this restriction, because the laws of a few countries – and I am thinking here of foreign countries rather than of countries within the Commonwealth – require that a person must first have renounced his former citizenship before acquiring the new one.[84]

Specifically, it was said, 'a certain number of British women have suffered hardship in this way through not being able to acquire their husband's foreign nationality.'[85] To address this issue, section 2 of the 1964 Act introduced a sort of conditional renunciation, whereby a person was permitted to renounce his or her UK status even if not a dual national as long as the Secretary of State was satisfied that the person would thereafter become the national of some other country. If he or she did not do so within 6 months of the renunciation, it would not take effect: the person would 'be, and be deemed to have remained, a citizen of the United Kingdom and Colonies notwithstanding the renunciation.'[86]

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[81] British Nationality Act 1964, s 1 (BNA 1964).
[82] BNA 1964, s 1(2). See Cedric Thornberry, 'British Nationality Act, 1964' (1965) 28 *MLR* 197, 199-200.
[83] *East African Asians v United Kingdom* [1973] 3 EHRR 76, [202]. For discussion of the case in context see Lord Lester of Herne Hill, 'Thirty years on: the East African Asians case revisited' [2002] *PL* 52.
[84] HL Deb 3 March 1964, vol 256 col 19 (Lord Derwent).
[85] HL Deb 3 March 1964, vol 256 col 19 (Lord Derwent).
[86] BNA 1964, s 2(1).

At every stage of the development of the law, therefore, we have moved further away from the common law vision of subjecthood as a status acquired – or perhaps imposed – at birth, from which no escape was possible. Bit by bit the range of circumstances in which one might renounce the status of subject, and in doing so extricate oneself from the relationship of allegiance and protection to the Crown, expanded. A person born into a permanent allegiance could now escape it, swapping it – when still in the Crown's realm – for an allegiance that was temporary and local, and then – by leaving those realm – throw it off, along with the correlative protection, altogether. Once the principle was accepted, however, there was no need to limit it to situations in which the loss was the direct decision of the subject. Though it might have been argued that a woman who chose to marry an alien did so knowing – after 1870 – the effect it would have on her status, it is impossible to view that secondary consequence as having been willed by her in the way it was by a man who had directly and deliberately renounced his nationality. The point at which the law of renunciation comes to encapsulate the modern liberal conception of citizenship was not therefore when the possibility that a person might choose to extricate himself, as a rational individual, from the relationship of legal ties with the state in which he was bound up was first allowed by that state. Rather it was the point at which the same voluntarist logic was extended to women, who could marry without losing their citizenship or, if they wished to do so, choose to give up their British citizenship in order to acquire that of their husbands. By 1964, however, this vision appeared to have won out, at least as regards those whose connection with the United Kingdom was suitably close. Those whose connection was not remained excluded from the liberal logic, just as those who possess too strong a connection with some other country are amenable to the deprivation of their UK citizenship.

The current law

The current law on renunciation of British citizenship is found in the British Nationality Act 1981, section 12 of which permits 'any British citizen of full age and capacity' to make a declaration of renunciation and to have it registered by the Secretary of State. Upon that registration taking place, the person in question is no longer a British citizen.[87] The provision, however, reflects concerns as to statelessness of the sort reflected in Article 7 of the UN Convention on the Reduction of Statelessness.[88] This provides that where a state's domestic law permits the renunciation of

[87] British Nationality Act 1981, s 12(2) (BNA 1981). The age and capacity point is not further considered here, though it is notable to consider its relationship to the ongoing litigation relating to the deprivation of Shamima Begum's citizenship. Though Begum was of 'full age' at the time of the deprivation order, that order seems to have had as its basis actions she took while still under 18. If a minor cannot renounce his or her citizenship, it would be anomalous to allow actions taken as a minor to justify deprivation.
[88] Signed by the United Kingdom in 1961 and ratified in 1966.

nationality, 'such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality' (though also that this general rule is not to apply where its application would be 'inconsistent with the principles stated in Articles 13 and l4 of the Universal Declaration of Human Rights'). The domestic procedures (like that in the 1964 Act) is therefore now subject to the rule that the Secretary of State is not to register a declaration unless satisfied that 'the person who made it will after the registration have or acquire some citizenship or nationality other than British citizenship.'[89]

This possibility of future acquisition does not – unlike its counterpart in the law of deprivation introduced by the Immigration Act 2014[90] – cease to matter after the deed is done. That is, citizenship can be deprived under certain limited circumstances even if to do so would render that person stateless, as long as the Secretary of State has 'reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory.'[91] If that belief turns out for whatever reasons to be false, and the person so deprived is left stateless as a result, the deprivation's validity in domestic law is unaffected. In relation to renunciation, however, not only must the Secretary of State be satisfied at the time of registration that the a person who does not have some other nationality will be able to acquire it after renunciation, but the Act provides further that if the person does not succeed in acquiring another nationality within six months of the declaration's registration 'he shall be, and be deemed to have remained, a British citizen notwithstanding the registration.'[92] As with the prior law, the 1981 Act provides that registration may be withheld in respect of any declaration 'made during any war in which Her Majesty may be engaged in right of Her Majesty's government in the United Kingdom.'[93]

The right to resume

Also new in the 1981 Act is the procedure found in section 13, which provides specifically for the resumption of British citizenship on the part of those who have renounced it.[94] Two variants of the resumption procedure exist. The first applies where a person has renounced British citizenship where to do so 'was necessary to enable him to retain or acquire some other citizenship or

89 BNA 1981, s 12(3).
90 BNA 1981, s 40(4A), inserted by the Immigration Act 2014.
91 BNA 1981, s 40(4A).
92 BNA 1981, s 12(3).
93 BNA 1981, s 12(4).
94 Under the 1948 Act, those who had renounced their citizenship could register as a British citizens if ordinarily resident in the United Kingdom, but only with Ministerial approval: BNA 1981, s 6(3).

nationality."[95] Registration in such situation is by right, but a person can avail him or herself of it only once. The second variant allows for resumption of citizenship upon application; it is available regardless of the reason for the renunciation, but is at the discretion of the Secretary of State.[96] The 1981 Act also permits holders of other statuses – British Overseas Citizenship, British Overseas Territories citizenship, and British subjecthood – to renounce those statuses.[97] British nationals (overseas) – the status given, upon registration, to Hong Kong residents at the time of Hong Kong's handover to China – may also be renounced.[98] Individuals holding multiple such statuses – British citizenship, say, alongside BOT citizenship – may renounce all of them simultaneously.[99]

Generally, these provisions have generated little litigation. One partial exception is *Secretary of State for the Home Department v Azad Ullah*.[100] There, the applicant, a British citizen by descent, wished to naturalise as a British citizen using a statutory procedure; to move into what was argued to be the separate class of citizenship, that of British citizen otherwise than by descent. The Court of Appeal rejected the proposition that a citizen by descent might naturalise as a citizen otherwise than by descent, holding that the 1981 Act does not define the rights associated with citizenship, and that it should be read as excluding the claim that there are multiple classes of citizenship.[101] There was no possibility of a British citizen applying, in effect, to naturalise as a British citizen. The court considered two other possible routes a citizen by descent might take. The first was that of renouncing citizenship then resuming it under the provisions discussed above. But that would not help overcome the barrier identified here: section 14(1)(g) of the 1981 Act provides that a person is a citizen 'by descent' if he has resumed citizenship by virtue of registration under section 13 of the Act and 'immediately before he ceased to be a British citizen as a result of a declaration of renunciation, was such a citizen by descent.' The second possible route would be to renounce citizenship and then seek to naturalise as a British citizen using the procedure available to those who have not previously held citizenship. But the Secretary of State has a discretion to refuse naturalization, and could, in deciding whether to naturalize a person who had renounced citizenship in such circumstances 'legitimately take into account the history and the fact that the

95 BNA 1981, s 13(1).
96 BNA 1981, s 13(3).
97 BNA 1981, ss 24, 29, and 34.
98 The Hong Kong (British Nationality) Order 1986, SI 1986/948, reg 7(10).
99 Home Office, *Nationality Policy: renunciation of all types of British nationality* (Version 3.0) (30 January 2018), 7.
100 *Secretary of State for the Home Department v Azad Ullah* [2001] EWCA Civ 659.
101 [2001] EWCA Civ 659, [26]ff.

applicant could instead proceed [under the resumption provision], and… the different consequences that would follow under that procedure.'[102] This too was therefore unlikely to produce the result sought.

The war exception

We have seen that since 1948 the law on renunciation has included a proviso by which a declaration of renunciation might be refused if made while the United Kingdom is at war. In the 1948 form, the proviso refers to refusal where the person is a 'national of a foreign country', meaning – in effect – countries other than the United Kingdom and its current and former colonies.[103] In its 1981 successor, this formulation is absent, and so the right to renounce is available more generally. There are a number of points to be made about this exception to the right to renounce. The first is that the rule was introduced as part of the post-War reform, when the question of war was undoubtedly present to the mind of drafters. This is in keeping with what we might already have surmised about the war exception: it exists so as to exclude the possibility that British citizens – at home or, more likely, abroad – will renounce their citizenship and with it their permanent allegiance to the Crown. If, that is, they have treasonous intentions, they cannot avoid the legal consequences of that treason by removing themselves from the relationship of allegiance and protection in which their citizenship entangles them. Second, the difference between the two exceptions – that of 1948 and that of 1981 – reflects the changes which had taken place in the meantime in order to avoid the possibility of statelessness (even when the result of the acts of those so made). Because, that is, it is not possible under the 1981 Act to renounce citizenship where to do so would make one stateless, there is no need to limit the war exception to those who are foreign nationals. It does apply to them, but also those who might contingently renounce their citizenship as part of the process of acquiring a second citizenship.

This war exception was not present in either the 1870 or 1914 Acts. Its inclusion in later statutes would seem to codify a body of litigation which had taken place in the first half of the twentieth century in which courts effectively read into the older acts a war exception, one which was in fact broader in its scope than that which later was written into statute.[104] In *R v Lynch*,[105] the King's Bench Division considered the case of a British subject born in Australia who had

[102] [2001] EWCA Civ 659, [34].
[103] BNA 1948, s 32(1).
[104] See the discussion of some of these issues in Arnold D McNair, 'British Nationality and Alien Status in Time of War' (1919) 35 *LQR* 213.
[105] *R v Lynch* [1903] 1 KB 444.

purported to naturalise as a burgher of the South African Republic at a time when it was at war with the United Kingdom. The defendant had been accused of a variety of acts alleged to constitute treason, some of them before the grant of letters of naturalization and some after. The relevant provision was that within the 1870 Act which provided that a person naturalizing in another states shall 'be deemed to have ceased to be a British subject, and be regarded as an alien'. As well as holding – by reference to the proviso that a person who becomes an alien 'shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien'[106] – that the defendant could not escape the consequences of his treasonous acts prior to naturalization, the court held that the naturalization was of no effect, and so acts done afterwards might also constitute treason:

> I am clearly of opinion that s. 6 does not empower a British subject to become naturalized in an enemy country during time of war, and that consequently the question of the prisoner's liability with respect to the subsequent overt acts must also be left to the jury. In my opinion there is nothing in the Act of 1870 to justify the contention that an act of treason can give any rights to any person whatever.[107]

There are some difficulties with this decision, however. The court did not hold – as various statutes provide – that renunciation in times of war was prohibited. What was forbidden, instead, was naturalization in a state with whom the United Kingdom is at war. The loss of British status was the secondary effect of that naturalization. The court, finding that the naturalization was invalid, was therefore holding also – but only indirectly – that the defendant remained a subject. The King's Bench Division's conclusion that the naturalization was ineffective when considered from the perspective of domestic law was irrelevant to the question of whether the defendant had successfully naturalized as a matter of SAR law. So, for example, in *Chamberlain v Chamberlain*,[108] the naturalization of a British subject as a German during a period of war between the United Kingdom and Germany was treated as being effective from the point of view of German law, which would seem to be the better view.[109]

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[106] NA 1870, s 15.
[107] [1903] 1 KB 444, 458.
[108] *Chamberlain v Chamberlain* [1921] 2 Ch 533.
[109] 'At most one can argue that a wartime naturalisation cannot operate as an expatriation and therefore results in a dual nationality': Nygh (n 48) 183.

Nevertheless, *Lynch* shows how the ancient logic of subjecthood – the connection between the allegiance owed to the Crown and the protection of the subject it received in return – continued to frame these questions even after statute began to depart from the principles in *Calvin's Case*. This is evident too in later cases. *Freyberger*[110]concerned the provision of the 1914 Act which permitted a natural-born British subject who was also the subject of another state to make a declaration of alienage and so cease to be a British subject. As with the provision at issue in *Lynch*, no explicit exception for war time was made. The applicant was a natural-born British subject, born to Austrian parents and so also an Austrian subject, who had been conscripted into the British military during the first world war. Upon reaching the age of majority, he made a declaration of alienage as provided for by the Act but the Home Secretary refused to register it. Both at first instance and on appeal that refusal was upheld, the court hold that a British subject 'although having a double nationality, cannot during a state of war divest himself of his allegiance to the British Crown in order to become solely the subject of an enemy State.' The Divisional Court explicitly left open the question of whether the exception it had read into the statute would apply in the same way to the subject of a neutral state. It later held too – considering facts which it took to be the converse of those in *Lynch* – that the English courts would not recognise a decree of an enemy state which purported to turn its subjects into those of a neutral state or to render them stateless: 'If such changes were to be permitted in time of war enemy agents might acquire facilities which could be used in a way very much to the prejudice of this country.'[111] The courts' concern for these matters, however, was much reduced where dealing not with the position of men who might be conscripted or interned but rather with British women who became aliens. In *Fasbender*,[112] the Court of Appeal held that, in accordance with the provisions of the 1914 Act, a woman who had married a German subject before the peace treaty with Germany had come into force was an alien and the taking of her property by the Public Trustee was therefore lawful. And so, where it suited the interests of the state there was no question of reading into statute exceptions of the sort that were repeatedly found elsewhere: 'there seems to me to be a wide distinction between a British national seeking to take advantage of an enabling provision of the Act to escape his liabilities and obligations under English law' the court said, 'and a British national doing an act which brings a provision of the Act down upon her in invitam.'[113]

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110 *R v Commanding Officer, 30th Battalion Middlesex Regiment, ex parte Freyberger* [1917] 2 KB 129.
111 *R v Home Secretary, ex parte L* [1945] 1 KB 7.
112 *Fasbender v Attorney General* [1922] 2 KB 850.
113 [1922] 2 KB 850, 859.

Finally, each exception leaves open the question of what it means to be at war for the purpose of the exception to the right to renounce. The 1948 Act referred simply to 'any war in which His Majesty may be engaged'; the 1981 Act instead to 'any war in which Her Majesty may be engaged in right of Her Majesty's government in the United Kingdom' reflecting the reality that, after the independence of the dominions, the Crown may be at war in right of some other state than the UK. Is this a legal trigger or a functional one? Does it, that is, require the United Kingdom to have declared war, or simply to be at war in a practical sense? The question is not easy: McNair, in his consideration of the point, noted only that a declaration of war 'is obviously the best evidence, and in modern times is generally available',[114] perhaps implying that the role of the declaration was a probative one rather than a legal necessity. It has been held in modern times that the legal consequences of war are not brought about by the mere fact of the existence of hostilities in the absence of a declaration of war. But the same case in which that was decided shows that the logic might cause problems in the context of renunciation. That is, in *Amin v Brown*,[115] it was held that when the UK was at war with Iraq an Iraqi citizen did not become an enemy alien and so could sue in the English courts. Its logic, if transplanted to the citizenship context, would mean that the war exception only applies if war is declared. It implies, therefore, that a British citizen might not be refused to have his or her declaration of renunciation registered where the war is merely factual rather than legal. This must be doubted: though an alien becomes an enemy alien only when war is formally declared – we now know – the duty of allegiance from which a citizen might wish to escape (and which the war proviso is intended, it would seem, to protect) exists whether or not war is ongoing. And so if the *Amin* logic is correct, a person cannot be prevented from extricating him or herself from a situation in which he or she owes allegiance to the Crown where the existence of war is a matter of fact and not of law. When considered from the point of view of what must be assumed to be the provision's purpose, such an outcome would seem anomalous, or even absurd. Whichever is the rule, however, it is clear that the logic of liberal, voluntarist, citizenship which is evidenced by the possibility of renunciation falls in the face of the older, militaristic, logic of citizenship, and the networks of allegiance and protection within which it stands.

The practice of renunciation

Little can be said with certainty about the practice of renunciation either historically or in the contemporary United Kingdom. One issue that has received attention in recent years is the

[114] McNair (n 104) 227.
[115] *Amin v Brown* [2005] EWHC 1670 (Ch).

position of dual UK-Irish citizens resident in Northern Ireland and the rights of such persons and their family members under EU law. In *McCarthy*,[116] the European Court of Justice held that the Citizens' Rights Directive was to be interpreted as meaning that the relevant free movement rights were not enjoyed by an EU citizen who has 'never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State.'[117] A dual UK-Irish citizen living in Northern Ireland would, therefore, be required to renounce his or her citizenship in order enjoy such rights, including the right to have his or her non-EU spouse benefit from that right.[118] Though the claim that this position is incompatible with the Belfast Agreement of 1998 has been rejected,[119] the British Government in early 2020 stated that its migration policy 'should not create incentives for renunciation of British citizenship by those citizens who may wish to retain it' and so committing to change the relevant rules. It gave effect to this commitment by allowing the family members of Northern Irish persons who do not enjoy free movement rights in their own right to benefit from the EU settlement-scheme regardless of the combination of UK and Irish citizenships – either, or both – held by the relevant Northern Irish person. Some, perhaps many, of those caught in recent years by the figures given below will no doubt have been British citizens who were also Irish citizens desiring to take advantage of EU free movement rights.

Beyond that, however, it is difficult to generalise as to what categories of person are likely to renounce British citizenship. The Home Office publishes statistics for the number of renunciations which take place annually, as well as the number of applications for such renunciation which are refused. The following table shows these figures between 2002 and 2018.[120]

Table 1: Renunciation of British citizenship by year

Year	Renunciations	Applications refused
2002	1194	21
2003	755	11

[116] *McCarthy v Secretary of State for the Home Department* [2011] 3 CMLR 10 (Case C-434/09).
[117] [2011] 3 CMLR 10, [57].
[118] See *De Souza (Good Friday Agreement: nationality*) [2019] UKUT 00355 (IAC), in which the applicant declined to renounce her citizenship so that her (American) husband could live with her in Northern Ireland under EU law on the basis that she did not consider herself BritishSee Alison Harvey, 'British or Irish or both?' (2020) 34 *JIANL* 216.
[119] *De Souza (Good Friday Agreement: nationality)* [2019] UKUT 00355 (IAC)
[120] Home Office, *Immigration statistics, year ending March 2019* (2019), notes on data tables.

2004	680	10
2005	589	11
2006	601	9
2007	583	12
2008	537	6
2009	568	14
2010	597	9
2011	492	10
2012	609	18
2013	602	41
2014	614	67
2015	428	62
2016	741	107
2017	416	28
2018	836	54

For the purposes of this table, the figure for both grants and refusals include applications for renunciation of all of the statuses one might under the BNA 1981 renounce: British citizenship, British Dependant Territories citizenship, British National (Overseas) citizenship, British Overseas citizenship and British Subject status.[121] The source explains that grants were 'higher in 2002 than in subsequent years due to grants to nationals of Zimbabwe reacting to a change in that countries law regarding dual nationality.'[122] Nevertheless, there is significant and unexplained variation in the figures both for grants and refusals with the figure for the former in 2012 fifty per cent higher than that in 2017 and the ratio of refusals to grants ranging from little over 1:100 in 2008 to almost 1:7 in 2016. Given that refusal is possible only on the grounds that the applicant will not have or acquire some other citizenship or nationality, or where the war exception applies, it must be assumed that the majority of refusals takes place on the former basis. Figures for the resumption of citizenship are of course only a small proportion of those for its renunciation:

Table 2: Resumptions of British citizenship by year[123]

[121] Home Office (n 120).**Error! Bookmark not defined.**
[122] Home Office (n 120).
[123] From the Home Office's response to a freedom of information request by the author.

Year of grant	Total	Section 13(1)	Section 13(3)
2009	90	90	0
2010	72	68	4
2011	62	61	1
2012	49	48	1
2013	52	51	1
2014	75	70	5
2015	43	39	4
2016	89	82	7
2017	79	76	3
2018	57	56	1

The number of persons resuming citizenship via the discretionary route are therefore negligible. The number resuming citizenship by right, however, is not as small as might be expected: in any given year, the figure might be more than one tenth of that of the number renouncing citizenship. Though the fact that the power to renounce has existed for so long, and that there is no time limit upon the ability to resume by right makes it impossible to speculate as to the average length of time between renunciation and resumption, the scale of the latter suggests that a sizable minority of those who renounce citizenship will later resume it. It is striking that not only is the law so generous to (some of) those who choose to renounce citizenship, but that that generosity is relied upon so heavily in practice.

Renunciation and the nature of British citizenship

Though both were equally impossible at common law, the power to deprive a citizen of his or her citizenship has a shorter history than does the power to renounce own's own citizenship, and yet has attracted far more attention. As noted above, it has been argued that the contemporary law of deprivation departs from the liberal conception of citizenship, both in positing citizenship as a privilege which might be lost where the interests of the state require it and in drawing distinctions between different categories of citizens, who are amenable to deprivation under distinct conditions. Reintroducing renunciation into the pictures complicates the vision of British citizenship which emerges from an account focused on deprivation. Deprivation is problematic in particular – but not solely – because it is involuntary. The state carries it out without the agreement of, and against the wishes of, the citizen, and in recent years has accompanied the expansion in the

use of the power with a series of new limitations on the ability to challenge its use.[124] By contrast with deprivation – amenability to which represents an ongoing subtraction from citizenship in its fullest form – the power to renounce is better understood as a privilege. It is done (now) only with the consent of, indeed at the instigation of, the citizen him or herself. Where the deprivation power has for a long time created the possibility that a person will be left inadvertently stateless, and the most recent addition to the power augments that possibility, the provisions around renunciation are carefully framed so as not to be capable of resulting in statelessness. So while renunciation similarly reflects the impermanence of statutory citizenship (in contrast with the indelibility of common law subjecthood), it does so from a very different direction: adding to the rights of (some) citizens rather than diminishing them.

The picture painted is further complicated by the possibility of resumption. To recall – there are two paths to resumption. One is where renunciation was for the purposes of taking up another citizenship. This form of resumption is by right, but is available only once. The other is not limited by purpose, but is at the discretion of the Secretary of State (with the exercise of such discretion presumably subject to judicial review). The effect of this possibility, therefore, is that contemporary law lets citizens have their cake and eat it twice over – able to renounce citizenship in order to take up another citizenship knowing that if they do not in fact do so the renunciation will not take effect. Even if their application for a second citizenship is successful, and so the renunciation takes effect as intended, they are able to resume their British citizenship no questions asked and – from the point of view of domestic law at least – without needing to sacrifice the second citizenship to do so. Though it is not undesirable per se, this level of the indulgence is multiply inconsistent to the approach taken to those the state does not want, who can be are deprived of citizenship on an ever-expanding range of grounds and are so deprived with increasing frequency and. The second resumption provision, though discretionary, allows for citizenship to resume without the ex-citizen having to meet any of the requirements of naturalisation which would apply to a person whose citizenship had been taken from him or her. Where deprivation is an exception to the liberal conception of citizenship, therefore, the power to renounce is the apotheosis of that conception: far from being a privilege, citizenship is so much a right of the individual that she can choose to renounce it at her whim, and to resume it should it suit her to do so. Rather than being marked indelibly by it, as at common law, citizenship is a largely voluntarist

[124] See the discussion in Ross (n 16) and Paul F Scott, *The National Security Constitution* (Oxford, Hart Publishing, 2018), ch 4.

construction, limited only by the need to avoid the evil of statelessness and the over-riding exigencies of war.

On paper, the distinction is striking, not least because many of the people who enjoy the right to renounce (and resume) citizenship will be exactly the same people as are potentially subject to deprivation – those who, born in the United Kingdom to foreign-born parents are natural-born citizens of both the UK and some other place. In addition, renunciation is possible for those who do not currently possess a second citizenship but who require to renounce their British citizenship in order to take up another one, in effect substituting one for the other. In reality, however, the group of people who are practically rather than theoretically subject to deprivation are likely to value their UK citizenship – indeed, they fight very hard to retain it, and the protection it affords them. Those who are voluntarily renouncing are, by contrast, likely to belong to very different groups, even if those two groups are, at a higher level, subsets of the same general category of dual citizens. And so it would not do to weigh the issue of renunciation against that of deprivation, as though the right to renounce, in improving the situation of the citizen by expanding his options and opportunities, goes some way to countering the damage done by the expanding law of deprivation. Rather, the better view must be that it exacerbates the issue, creating a situation in which at the same time as some people enjoy a sort of 'citizenship minus' others enjoy a sort of 'citizenship plus', able to keep hold of British citizenship while it is convenient to do so, cast it off at will and even resume it if necessary. Even if (as seems possible) there is an overlap between the two groups in terms of both being disproportionately composed of ethnic minority individuals than is the population as a whole, it is likely that some other factor – money, perhaps – allows us to distinguish those in one category from those in the other. In which case an account of the contemporary reality of British citizenship which gives as much room to renunciation as to deprivation is perhaps less edifying than are those recent accounts which address the latter and not the former: there are not two classes of British citizenship but three, and the law happily takes from some while giving to others.

The development of the law on deprivation of citizenship – and the associated practice – has called into question many of the assumptions which underpinned the law of citizenship in the United Kingdom in the past. Citizenship is now, for many of those that hold it, potentially – and often actually – contingent upon elusive and ever-expanding notions of what the public interest requires, with very little standing between the executive and a (further) expansion of the use of those powers. On top of the multitude of citizenship statuses which exist and which carry with

them very different rights, this creates a very real and important divide between those who have and those who do not have a second citizenship to fall back on. Renunciation is a far more widely used mechanism than is the deprivation power though quite reasonably has not attracted the same level of attention. It represents an affirmation of the model of liberal citizenship which the modern law and practice of deprivation has often been taken to challenge. It seems likely, however, that there is no tension in this coexistence of a state power which is a challenge to the liberal conception of citizenship and an individual power which is its affirmation, capturing the voluntarist trend in modern citizenship law in its purest form. That is, the groups of people who might become subjects of the former power and who might exercise the latter overlap only on paper and not in practice. British citizenship is too valuable to the former for them to wish to lose it, whereas the latter group have or are about to acquire a second citizenship which in the totality of their life circumstances they wish to have either instead of or – given that they might resume the British citizenship having given it up – alongside that one.